



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------------------|-------------|----------------------|---------------------|------------------|
| 10/523,594 | 03/04/2005 | Adrian Blagg | 102792-408(11089P1) | 1338 |
| 27389 | 7590 | 11/02/2007 | EXAMINER | |
| NORRIS, MCLAUGHLIN & MARCUS | | | BOYER, CHARLES I | |
| 875 THIRD AVE | | | ART UNIT | |
| 18TH FLOOR | | | PAPER NUMBER | |
| NEW YORK, NY 10022 | | | 1796 | |
| | | | MAIL DATE | DELIVERY MODE |
| | | | 11/02/2007 | PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/523,594

Applicant(s)

BLAGG ET AL.

Examiner

Charles I. Boyer

Art Unit

1796

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 September 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5,7-15 and 17-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5,7-15 and 17-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This action is responsive to applicants' request for continued examination received September 10, 2007. Claims 1-5, 7-15, and 17-19 are currently pending.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 5, 7-9, 11, and 13-15 are rejected under 35 U.S.C. 102(e) as being anticipated by Morelli, US 6,524,624.

Morelli teaches a two-part disinfecting system consisting of a first part comprising 0.32% sodium chlorite, 1% alpha olefin sulfonate, and 0.02% sodium hydroxide, and a second part comprising 5.2% lactic acid, 0.5% alkyl benzene sulfonate, and 0.5% dye, wherein the two parts are combined to yield a disinfectant composition (col. 12, example 8D). Another example consists of a first part comprising 0.64% sodium chlorite and 0.02% sodium hydroxide, and a second part comprising 2.64% lactic acid, 0.53% ethoxylated alkyl sulfonate, and 0.3% dye, wherein the two parts are combined to yield a disinfectant composition (page 8, example 2, surfactant #4). As this reference meets all material limitations of the claims at hand, the reference is anticipatory. With respect to the viscosity of the final composition, as the reference teaches the same components in the same amounts as the presently claimed composition, the examiner maintains the

Art Unit: 1796

composition will inherently have a viscosity within the presently claimed range.

Applicants have traversed this rejection on the grounds that the reference is silent with respect to any appreciable change in thickening upon mixing the two precursor compositions to form a final mixture.

First, as the first and second parts of the reference are identical to the first and second parts claimed, if their mixture results in a viscosity change for applicants' composition, why not for the composition of the reference? Even if, for the sake of argument, applicants are correct, merely arguing that the viscosity change does not occur is insufficient to warrant the withdrawal of the reference. Specific evidence would have to be presented in the form of a side-by-side comparison of the prior art composition and applicants' composition in order for this argument to be persuasive. For the present then, the rejection is maintained.

2. The rejection of claims 1-3, 5, 11, and 13-15 under 35 U.S.C. 102(b) as being anticipated by Harrison et al, WO 98/57544 is withdrawn in view of applicants' amendment and response.

3. The rejection of claims 1-3, 5, 11, and 13-15 under 35 U.S.C. 102(e) as being anticipated by Hei et al, US 6,663,902 is withdrawn in view of applicants' amendment and response.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 7-15, and 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morelli, US 6,524,624.

Morelli is relied upon as set forth above. Recall that Morelli teaches ethoxylated anionic surfactants. As ethoxylated sulfates are among the most common anionic surfactants known, the inclusion of such a surfactant, in light of the reference's teaching of ethoxylated anionics, would be an obvious choice to one of ordinary skill in the art.

Applicants have traversed this rejection for the reasons above, and the examiner's response is the same.

5. Claims 1-5, 11, and 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harrison et al, WO 98/57544.

Harrison et al teach a two-part disinfecting system consisting of a first part comprising 1% sodium chlorite and 0.02% blue dye, and a second part comprising hydrochloric acid, wherein the two parts are combined to yield a colored composition which releases chlorine dioxide (page 4, example). Suitable additives of the invention include surfactants that may be added in either of the parts (page 2, lines 20-25).

Accordingly, it would have been obvious to one of ordinary skill in the art to include a

Art Unit: 1796

surfactant in the example above with a reasonable expectation of successfully obtaining an effective disinfecting system. With respect to the present claim limitation where at least 1% surfactant must be added, persons of skill in the art are well aware of cleaning-effective amounts of surfactants, and such amounts clearly encompass the very broad range claimed. Applicants have argued in their response that the selection of specific surfactants is critical to the thickening of their composition, yet they have not specified any particular surfactant in the claims at hand (see page 8, first full paragraph of applicants' response, paper # 9/10/2007). This would seem to contradict applicants' argument that the selection of a specific surfactant is critical.

6. Claims 1-5, 11, and 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hei et al, US 6,663,902.

Hei et al teach a two-part disinfecting system consisting of an acidic first part and an alkaline second part comprising sodium chlorite wherein the two parts are combined to yield a composition having a pH as low as 4 (col. 30, claims 13, 17, and 18). An example of such a composition comprises 2% nonionic surfactant and 2% anionic surfactant (col. 22, table 4). Accordingly, it would have been obvious to one of ordinary skill in the art to include a surfactant in the system above with a reasonable expectation of successfully obtaining an effective disinfecting system.

Applicants have traversed this rejection when it was applied as a 102 reference on the grounds that the reference does not generate chlorine dioxide in the same way as applicants. However, all that is required to meet the present claim limitations is an

Art Unit: 1796

alkaline and acidic liquid that forms chlorine dioxide, which, referring again to claim 17 of the reference, is satisfied. The presence of additional components or method steps is immaterial.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles I. Boyer whose telephone number is 571 272 1311. The examiner can normally be reached on M-Th 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571 272 1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Charles I Boyer
Primary Examiner
Art Unit 1796